

REMARKS

Claims 27 to 29 are added, and therefore claims 14 to 21 and 27 to 29 are now pending and being considered in the present application (claims 22 to 26 were previously withdrawn in response to a restriction requirement).

In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With regard to paragraph three (3), claims 14 to 16 and 20 to 21 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,498,976 (the “Ehlbeck” reference).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

Claim 14 includes the feature of “executing a rollover stabilization algorithm as a function of the mass of the vehicle, the rollover stabilization algorithm intervening in a driver operation in a critical situation using an actuator in order to stabilize the vehicle.” The “Ehlbeck” reference does not identically disclose (nor even suggest) the claim feature of a “rollover stabilization algorithm intervening in a driver operation in a critical situation using an actuator in order to stabilize the vehicle.” The Office Action asserts that these features are

found in the “Abstract; col 5, lines 12-45; col 15 – 20; col 21, lines 49-63). However, it is respectfully submitted that any review of the cited sections or the entire “Ehlbeck” reference makes clear that these features are not identically disclosed (nor even suggested), as provided for in the context of the claimed subject matter.

The “Ehlbeck” system does not intervene in a driver operation as provided in the context of the claimed subject matter. The present application explains that an **intervention** in the driving operation may be by way of the “braking system, engine management or an active steering, so as to stabilize the vehicle” (*Specification*, page 1, lines 15 to 19), so that it relates to an active control of the vehicle. In stark contrast, the “Ehlbeck” reference merely offers **advice** to the driver via signals, since it simply does not offer the active intervention as provided for in the context of the claimed subject matter. In particular, Figure 1 of the “Ehlbeck” reference is an illustration of the advisory system. The final output of the system is block 58 which is an **indicator** that merely provides information. Figures 7A to 9C illustrate the type of messages that are provided to the driver. Thus, the feature of an **intervening in a driver operation ... using an actuator**, as provided for in the context of the claimed subject matter, is not disclosed.

The “Ehlbeck” reference merely indicates that “[r]ather than distracting the driver with rollover warnings at the time the rollover conditions have taken place, the driver may be alerted to such conditions **following** the event.” (The “Ehlbeck” reference, column 4, lines 1 to 3 (emphasis added)). Thus, “contemporaneous after the fact feedback to the driver [is provided to encourage] behavior modification. The system purportedly provides an effective driver training tool as feedback to the driver is typically provided while the vehicle is still being driven by the driver.” (*Id.*, column 4, lines 8 to 13). Thus, the method merely provides feedback to the driver to encourage better driving behavior. In fact, “Ehlbeck” indicates that a “recommendation may also be indicated to the driver of corrective action that could have been taken to reduce the risk.” (*Id.*, column 4, lines 14 to 17). Thus, an **intervention in a critical situation** to prevent loss of control of the vehicle, as provided for in the context of the claimed subject matter is not identically disclosed, nor suggested. At best, information is provided after a critical situation to inform the driver.

To the extent that the Office may be relying on “automatically decelerated” in the abstract of the “Ehlbeck” reference to disclose the claimed features, it is respectfully submitted that the deceleration of “Ehlbeck” is not such that the rollover stabilization algorithm intervenes in a critical situation as provided in the context of the claimed subject matter. In fact, in “Ehlbeck” the deceleration is achieved by the driver, and the “automatic” reference in “Ehlbeck”

refers to the ABS system. The “vehicle may have an automatically modulated braking system which in a conventional manner controls the braking of at least selected wheels of the vehicle. The control of braking at a wheel is modulated under certain wheel slip conditions as determined by the automatically modulated braking system (ABS system). (The “Ehlbeck” reference, column 5, lines 12 to 15). The “Ehlbeck” reference merely calculates whether the braking by the driver is safe, providing a message if it is not. The “hard-braking event may be indicated to the vehicle operator. This indication may be made shortly **after the event conditions have ended** to provide contemporaneous feedback to the driver. (*Id.*, column 6, lines 1 to 4, (emphasis added)). Thus, an intervention in a critical situation to prevent loss of control of the vehicle, as provided for in the context of the claimed subject matter and the specification is not identically disclosed, nor suggested.

Accordingly, claim 14 and its dependent claims 15 to 16 and 20 to 21 are allowable. It is therefore respectfully requested that the anticipation rejections be withdrawn.

With regard to paragraph six (6), claim 17 was rejected under 35 U.S.C. 103(a) as unpatentable over the combination of the “Ehlbeck” reference in view of U.S. Patent No. 6,324,447 (the “Schramm” reference).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

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Claim 17 is allowable for essentially the same reasons as claim 14, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference. It is therefore respectfully requested that the obviousness rejection for claim 17 be withdrawn.

Claim 18 was rejected under 35 U.S.C. 103(a) as unpatentable over the combination of the "Ehlbeck" reference in view of U.S. Patent No. 5,825,284 (the "Dunwoody" reference).

Claim 18 is allowable for essentially the same reasons as claim 14, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference. It is therefore respectfully requested that the obviousness rejection for claim 18 be withdrawn.

Claim 19 was rejected under 35 U.S.C. 103(a) as unpatentable over the combination of the "Ehlbeck" reference in view of "Schramm" and "Dunwoody.").

Claim 19 is allowable for essentially the same reasons as claim 14, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference. It is therefore respectfully requested that the obviousness rejection for claim 19 be withdrawn.

New claims 27 to 29 do not add any new matter and are supported by the present application. Claims 27 to 29 depend from claim 14 and are therefore allowable for the same reasons.

Accordingly, pending and considered claims 14 to 21 and 27 to 29 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that pending and considered claims 14 to 21 and 27 to 29 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,
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